

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ANTHONY GAINES

Claimant

VS.

GOODYEAR TIRE & RUBBER COMPANY

Self-Insured Respondent

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Docket No. 1,011,594

ORDER

Claimant appealed the February 3, 2005 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

This is a claim for an April 4, 2002 accident that injured claimant's right hand and wrist. In the February 3, 2005 Order, Judge Benedict denied claimant's request for psychiatric treatment after finding that claimant failed to prove his alleged psychiatric problems were directly traceable to his accident at work.

Claimant contends Judge Benedict erred. Accordingly, claimant requests the Board to grant his request for psychiatric treatment.

Conversely, respondent argues the Board does not have jurisdiction over the preliminary hearing Order as the issue whether claimant's psychiatric problems are related to his April 2002 accident is not one enumerated in K.S.A. 44-534a. In the alternative, respondent argues claimant failed to prove his psychiatric problems were caused by the April 2002 right hand injury and, therefore, the Board should affirm the February 3, 2005 Order.

The only issues before the Board on this appeal are:

1. Does the Board have jurisdiction to review the preliminary hearing finding that claimant failed to prove his psychiatric problems are directly traceable to his April 2002 accident and resulting right wrist injury?
2. If so, did claimant satisfy his burden of proof?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes:

The Board has jurisdiction to review the preliminary hearing finding that claimant failed to prove his psychiatric problems were directly traceable to his April 4, 2002 accident and resulting right wrist injury. The preliminary hearing statute, K.S.A. 44-534a, provides that the Board shall review disputed preliminary hearing findings with regard to whether a worker's alleged injury arose out of and in the course of employment. Consequently, the Board has jurisdiction to review a disputed preliminary hearing finding that addresses injury to the psyche.

The parties do not dispute that claimant injured his right hand on April 4, 2002, while working for respondent. Following that accident, claimant underwent three surgeries, which included a total right wrist fusion with plating.

In late June 2003, claimant sought psychiatric treatment with Dr. Gilbert R. Parks. At that time, claimant told the doctor that he was hurting and was depressed. After their initial session, Dr. Parks diagnosed, among other things, adjustment disorder with mixed anxiety and depression. Moreover, the doctor concluded claimant's depression resulted from the work-related injury. Dr. Parks wrote, in part:

His [claimant's] prognosis is guarded and it depends on the outcome of his surgery even with a sense of fusion of arm and having a permanent defect. He is already struggling with the issue of a chronic disease and the effect that it has had on his life in terms of hypertension, diabetes and attention deficit disorder and he has been devastated by this injury. He was performing a job that provided an income for his family but not the employment of his choice. He is angry that he ended up doing this type of work and now he has a permanent injury to himself that has greatly affected his life and the life of his family therefore he is very angry and frustrated about it. The depression that has arisen is from the job injury¹

Following their initial visit, Dr. Parks began seeing claimant on a weekly basis.

On November 15, 2004, Dr. Parks wrote respondent, noting claimant was receiving treatment from him for an emotional condition that was the continuation of the April 4, 2002 work-related injury. The doctor's January 3, 2005 progress notes list, among others, diagnoses of continuous, intense right wrist pain and adjustment disorder with mixed

¹ P.H. Trans., Resp. Ex. B.

depression and anxiety. Those notes also reflect claimant was continuing to overcome the loss of use of his right arm.

Claimant's attorney hired Dr. Melvin Berg to evaluate claimant for purposes of this claim. Dr. Berg met with claimant in July 2003 and concluded claimant had mild, recurrent Major Depressive Disorder. Dr. Berg also determined claimant's depression was an outgrowth of his chronic pain but possibly worsened by other factors. In his July 17, 2003 report, the doctor concluded, in part:

The patient's current depression is the outgrowth of his chronic pain and its deleterious effects on his daily functioning. His depression may also be exacerbated by a disposition to feel mistreated. His life history indicates an inclination to perceive others as treating him in an unfair and punitive manner, perhaps a way of perceiving the world which could well have been fostered by the abuse he experienced as a child. He is inclined to feel mistreated by others generating anger and resentment. His mistrust and irritability triggers interpersonal conflicts which he has struggled with throughout his life in school, and work settings as well as his personal relationships.²

Following the July 2003 evaluation, Dr. Berg recommended that claimant continue his treatment with Dr. Parks, who was then treating claimant for depression, until claimant regained his former level of stability and equilibrium. Dr. Berg saw claimant a second time in August 2004 and noted that claimant had gained from Dr. Parks' treatment.

On the other hand, respondent hired Dr. Patrick L. Hughes to evaluate claimant for purposes of this claim. Dr. Hughes interviewed claimant in early November 2004 and concluded claimant's Major Depression, which was diagnosed in July 2003, was most likely a genetically caused, biochemical disturbance in the brain that could not, in any way, be related to chronic pain or external life events. Moreover, Dr. Hughes found no evidence that claimant was continuing to experience Major Depression at their November 2004 interview and that claimant's representation of being severely depressed was, most likely, malingering.

At this juncture of the claim, the record contains the opinions of two hired experts, Dr. Berg and Dr. Hughes, and the opinion of the treating psychiatrist, Dr. Parks, who is being paid by claimant's private health insurance company. Dr. Parks has now seen claimant more than 50 times. Accordingly, there is no dispute that Dr. Parks has spent more time with claimant than either Dr. Berg or Dr. Hughes. And, theoretically, Dr. Parks is in the best position to diagnose claimant and determine his need for psychiatric treatment.

² *Id.*, Cl. Ex. 1 at 7.

Based upon the present record, which lacks an independent psychiatric evaluation ordered by the Judge, the Board adopts Dr. Parks' conclusion that the April 2002 accident caused claimant's depression and need for psychiatric treatment.

Accordingly, the February 3, 2005 preliminary hearing Order should be reversed as claimant is entitled to receive treatment for the increased psychiatric problems he experienced due to the April 4, 2002 accident. Should the parties disagree as to the appropriate health care provider, they should return to the Judge for additional proceedings.

WHEREFORE, the Board finds claimant is entitled to receive psychiatric care and treatment as provided above.

IT IS SO ORDERED.

Dated this ____ day of April 2005.

BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
John A. Bausch, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director